

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

**CIVIL ACTION NUMBER:**

**IN RE: VALSARTAN PRODUCTS  
LIABILITY LITIGATION**

**19-md-02875-RBK-JS**

**TELEPHONIC  
STATUS CONFERENCE**

Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets  
Camden, New Jersey 08101  
February 24, 2021  
Commencing at 10:00 a.m.

**B E F O R E:**

**THE HONORABLE ROBERT B. KUGHER,  
UNITED STATES DISTRICT JUDGE  
SPECIAL MASTER THE HONORABLE THOMAS I.  
VANASKIE (RET.)**

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Proceedings recorded by mechanical stenography; transcript  
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1 A P P E A R A N C E S (Continued) :

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1 (PROCEEDINGS held in open court before The Honorable Robert B.  
2 Kugler, United States District Judge, and Special Master The  
3 Honorable Thomas I. Vanaskie, at 10:00 a.m.)

4 JUDGE VANASKIE: Now we're all on so we're ready to  
5 get started. At the beginning, of course, I'll ask you to  
6 silence your mics on your phones, except if you are speaking,  
7 and to identify yourself, address yourself, while speaking.

8 Camille, are you our court reporter today?

9 THE COURT REPORTER: Yes, I am, Your Honor. Good  
10 morning.

11 JUDGE VANASKIE: All right, Great. Good morning. It  
12 is a beautiful morning here, too.

13 I wanted to thank counsel for sending me the case  
14 summaries I'm calling them. They were extremely helpful. I  
15 want to commend counsel for including hyperlinks to the record  
16 which proves to be very helpful for me. So thank you very much  
17 for that.

18 And without further elaboration, let's get into the  
19 agenda for today.

20 Who will be speaking on behalf of the defendants?

21 MR. GOLDBERG: Your Honor, this is Seth Goldberg of  
22 Duane, Morris on behalf of the ZHP entities and the defendants.  
23 A number of different counsel for the different defendants will  
24 be speaking on different issues --

25 JUDGE VANASKIE: Certainly.

1 MR. GOLDBERG: -- today and I'll let them introduce  
2 themselves.

3 JUDGE VANASKIE: All right. And, Mr. Slater, will you  
4 be speaking mostly on behalf of the plaintiffs but as well as  
5 others?

6 MR. SLATER: Good morning, Your Honor. It's Adam  
7 Slater, for the record. I'll be speaking on some of the  
8 topics, but just the way that the mix is, there will be  
9 multiple people from the plaintiffs' leadership who will be  
10 addressing certain topics, actually.

11 JUDGE VANASKIE: Very well. And, of course, identify  
12 yourself when you're speaking.

13 We'll start with the agenda as it's been presented to  
14 me and we'll start with the first matter that was in Mr.  
15 Goldberg's letter, and that is the plaintiff deposition issues.  
16 I know this may not be completely right but let's have a  
17 discussion on it so I could -- because I think it's an issue  
18 that should be easily resolved.

19 Mr. Goldberg?

20 MR. GOLDBERG: Thank you, Your Honor.

21 MR. ABRAHAM: Your Honor, this is -- this is Eric  
22 Abraham from Hill, Wallack. I represent Hetero Labs. I'll be  
23 handling this issue, with Your Honor's permission.

24 JUDGE VANASKIE: All right. Can I have your name  
25 again, sir?

1 MR. ABRAHAM: Eric Abraham, A-B-R-A-H-A-M, for Hetero  
2 Labs, and my firm is Hill, Wallack --

3 JUDGE VANASKIE: Thank you.

4 MR. ABRAHAM: -- H-I-L-L W-A-L-L-A-C-K. May I  
5 proceed?

6 JUDGE VANASKIE: You may proceed.

7 MR. ABRAHAM: Thank you very much, Your Honor.

8 No need to belabor this point. All that we want is  
9 for plaintiffs' counsel to ensure that its witnesses are Zoom  
10 ready at the start of the deposition rather than starting to  
11 get Zoom ready at the start of the deposition. We've had  
12 several unfortunate examples where depositions have either been  
13 cancelled or started after a lengthy delay and, thankfully, our  
14 deposition vendor, Veritext, has been able to have a technology  
15 consultant, that we pay for, participate in every deposition  
16 and that person, at our expense, has been doing what we believe  
17 to be plaintiffs' responsibility. And, in fact, our dep vendor  
18 has attempted, with mixed results, to contact the witness in  
19 advance to ensure readiness.

20 I have conferred with plaintiffs' counsel on occasions  
21 when this has -- this issue has arisen. Mr. Slater may not  
22 have been aware of those interactions and I don't believe that  
23 he participated in them.

24 The response that I've gotten from plaintiffs' counsel  
25 is, essentially, that I was asking too much to expect

1 plaintiffs to be ready to start at the start.

2           So what I'm hoping, Your Honor, is that by raising  
3 this subject today it suffices to send the message to  
4 plaintiffs that we don't expect perfection with the technology  
5 issues, because we all know that issues do arise, we just  
6 expect diligence; in other words, having Zoom loaded on an  
7 appropriate device before the deposition commences and the  
8 witness having a basic understanding of how to connect to both  
9 audio and visual, and we don't believe that that's too much to  
10 ask.

11           Thank you, Your Honor.

12           JUDGE VANASKIE: All right. Thank you, Mr. Abraham.

13           Who will be addressing this issue on behalf of the  
14 plaintiff?

15           MR. HONIK: Your Honor, this is Ruben Honik. Good  
16 morning.

17           JUDGE VANASKIE: Good morning.

18           MR. HONIK: There are a number of us who have  
19 conducted or defended some of these depositions. And let me  
20 just say at the outset that no one has met and conferred with  
21 us beyond the problems that have occasionally arisen, each of  
22 which have been dealt with in the moment. I'm speaking now,  
23 because Mr. Abraham conducted the deposition of my client, Mr.  
24 Semmel, and I can represent to the Court that Mr. Semmel is a  
25 senior citizen who lives in the Lehigh Valley who promptly

1 attempted to get on to the Zoom platform, which he had used  
2 before, and on the morning of his appointed deposition was  
3 unsuccessful in logging in. With the rather patient and  
4 courteous help of the Veritext tech who was available, 30 or 40  
5 minutes later he was ready to go and there were no complaints  
6 at the time. The deposition was conducted, albeit after six  
7 hours of questioning.

8           The fact remains, Judge, that lawyers who are  
9 courteous with one another make allowances and understand that  
10 problems occasionally arise. Sometimes judges are late by  
11 seven minutes because they have the wrong number. I've been on  
12 this call -- I've been --

13           JUDGE VANASKIE: Well played.

14           MR. HONIK: I've been on this call with Judge  
15 Schneider in which we had terrible connection, through no fault  
16 of anyone, and 60 lawyers had to get off the phone and resume  
17 the conference call 20 or even 30 minutes later.

18           The fact is there's no bad intention. Everybody gets  
19 ready. Mr. Semmel's deposition about which Mr. Abraham  
20 complained was one of the earliest, and from then until now,  
21 everybody on the plaintiffs' side who's been conducting or  
22 defending depositions have been quite diligent in ensuring, to  
23 the extent possible, that our clients are and have the Zoom  
24 platform. Not all of these folks are highly tech savvy and we  
25 do our level best to get them ready.

1           One of the other examples in the Duane, Morris letter  
2 is the deposition of Mr. Molinaro, another client of mine whose  
3 deposition I defended, and I'm candidly astonished that they're  
4 using that as an example. Mr. -- we advised the other side  
5 that Mr. Molinaro simply didn't have a computer. That said, he  
6 has used Zoom on his iPhone many times. When we advised the  
7 other side of that, arrangements were made for some exhibits to  
8 be overnighted to Mr. Molinaro, who lives in Florida, and  
9 through no fault of his own, FedEx didn't get there in time.  
10 And what did I do as counsel? I said to the associate from  
11 Duane, Morris who was conducting the deposition, there's no  
12 need to -- there's no need to cancel this. Email the documents  
13 to a nearby FedEx, I will instruct my client to get in his car  
14 and get the documents. He did that. The deposition started an  
15 hour late, as a courtesy to the other side and everybody else  
16 who was participating, and the deposition was conducting.  
17 Instead of thanks for having Mr. Molinaro do that, at my  
18 instruction, as I think any courteous attorney would do, he's  
19 now the subject of a letter to the Court complaining about our  
20 lack of preparedness. There's nothing that he did or I did to  
21 engender the problem that was encountered on the morning of his  
22 deposition.

23           So these issues are, I think, much ado about nothing.  
24 I think -- I can attest, for the Court's benefit, that each and  
25 every one of us in every instance has been prompt, courteous,

1 efficient, on time.

2 We had a very disabled senior citizen in Louisiana who  
3 had absolutely no technology available to her, and we made  
4 arrangements to physically send lawyers to accompany her, and  
5 even that turned into a big problem.

6 So, Judge, I'm not really sure what the defendants are  
7 complaining about. I dare say the issue of depositions is  
8 going to return to this Court, not about the technical problems  
9 but about the fact that what should be an hour deposition, a  
10 two-hour deposition -- remember, these are economic class  
11 plaintiffs, the only issue is what they bought and the amount  
12 and so forth -- they're being questioned for five, six and  
13 seven hours about the cancers that their siblings had, the  
14 cancers that their parents had, medical conditions wholly  
15 unrelated to their blood pressure.

16 We'll get a meet and confer with the defendants about  
17 the scope of these examinations and, frankly, the, you know,  
18 taking a seven-hour deposition of an economic class rep; but  
19 for purposes of today, we think this is not an issue that needs  
20 the Court's attention beyond, you know, congratulating counsel  
21 to continue to cooperate with each other on this technological  
22 preparedness.

23 JUDGE VANASKIE: All right. Mr. Abraham, did you want  
24 to respond?

25 MR. ABRAHAM: Yes, sir, briefly.

1           In all of Mr. Honik's recitation of his point of view,  
2 what I didn't hear was a commitment that plaintiffs would do  
3 their level best going forward to have their clients Zoom ready  
4 at the start. The delay at the Semmel deposition was over an  
5 hour. We had a deposition that had to be cancelled completely.  
6 We're not asking for anything special, we're not asking for  
7 anything extraordinary. We just want to be able to start,  
8 generally speaking, at the start, and we'd like a commitment  
9 that the witnesses will have Zoom loaded on an appropriate  
10 device before the deposition commences with a basic  
11 understanding of how to connect to both audio and visual.  
12 That's it.

13           JUDGE VANASKIE: All right. Thank you.

14           I view this as much ado about nothing. I was -- I'm  
15 sure you were all frustrated waiting for me to get on the  
16 phone. I was on the phone on hold. I was on the wrong number.  
17 These things happen. But I do expect that deponents will be  
18 Zoom ready in advance of the deposition. I think as a  
19 professional courtesy that those arrangements will have been  
20 made, that there would have been some test run or testing of  
21 the individual plaintiff's circumstances to make sure that  
22 they're able to participate in the deposition at the time that  
23 it's scheduled to commence. I don't think this requires, at  
24 this point, any type of order from the Court.

25           I commend you for working through these problems.

1 You're going to, unfortunately, have these technical glitches  
2 that come up, and somebody who dials into the wrong number, to  
3 get straightened out, it takes a little bit of time. Just work  
4 with each other. As you continue to work with each other, I'm  
5 confident these problems can go away. I appreciate the  
6 frustration and I certainly understand the expense that's  
7 incurred when you have to have a deposition delayed or  
8 postponed. So all I can say to you at this point is work  
9 cooperatively. If this continues to be a problem, please write  
10 to me. If we need to get an order in that says you have to be  
11 on the Zoom session 15 minutes or 30 minutes in advance of the  
12 schedule, we'll do that, but I don't see a need for that at the  
13 present time.

14 So let's move on to the next issue on the agenda. And  
15 I'm working, Mr. Goldberg, off your letter, and the second item  
16 on yours is the Rule 34 request directed to bellwether trial  
17 plaintiff pool.

18 Who will be addressing this issue?

19 MR. GOLDBERG: Your Honor, I believe Ms. Lockard from  
20 the Greenberg, Traurig firm is going to be addressing this  
21 issue.

22 MS. LOCKARD: Yes. Hi, Your Honor. It's Victoria  
23 Lockard from Greenberg, Traurig on behalf of Teva. And this is  
24 merely a report, Your Honor.

25 JUDGE VANASKIE: Yes.

1 MS. LOCKARD: We are in the process of negotiating  
2 Rule 34 document requests to plaintiffs. We've provided those  
3 to plaintiffs and they have agreed to provide us with any  
4 global objections and red lines no later than next Wednesday so  
5 that we will be in a position, we hope, by the mid-March  
6 conference to be able to present any dispute over those  
7 requests to you.

8 So at this point, Your Honor --

9 JUDGE VANASKIE: All right.

10 MS. LOCKARD: -- I think it's the least but we wanted  
11 to flag that issue for you because it is coming over the  
12 horizon.

13 JUDGE VANASKIE: All right. Thank you for that.

14 Anybody want to address this on the plaintiffs' side?

15 MR. NIGH: Yes, Your Honor. This is Daniel Nigh.

16 I just wanted to address that we've received the  
17 discovery, we're taking a look at it to just try to understand  
18 in terms of the scope of discovery, and we will respond by --  
19 we did promise to respond by Wednesday of next week with both  
20 our red lines and any macro issues that we have.

21 JUDGE VANASKIE: Okay.

22 MR. NIGH: I did want to raise to the Court that, you  
23 know, one of the macro issues is that, you know, almost a year  
24 ago we negotiated and had a fulsome negotiation on what the  
25 Plaintiff Fact Sheet would be for bodily injury cases. It's a

1 40-page Plaintiff Fact Sheet, we believe it's very  
2 comprehensive, with multiple pages for requests for production.  
3 So in light of what's already occurred in that fulsome  
4 discussion in terms of discovery expected of bodily injury  
5 cases, that's the viewpoint as to which we're going to be  
6 looking at these Rule 34 disclosures.

7 In addition, we do believe that some of these  
8 disclosures are actually more ripe for later down the line and  
9 we'll be making that proposal as well next week, most likely.  
10 But, again, we want to make sure we take a full look at it and  
11 present those macros to them in addition to our red lines  
12 pursuant to Rule 34 disclosures.

13 JUDGE VANASKIE: All right. Thank you very much.  
14 Anything else on this, Ms. Lockard?

15 MS. LOCKARD: Yes, Your Honor. I just want to  
16 respond, briefly.

17 You know, back when we negotiated the Defense Fact  
18 Sheet -- or the Plaintiff Fact Sheets, rather, for the personal  
19 injury plaintiffs, you know, we did specifically contemplate  
20 and we did discuss with Judge Schneider that the fact sheets  
21 were intended for all plaintiffs in the litigation and that  
22 there would be, you know, additional, more detailed discovery  
23 that would be served on the eventual bellwethers and that was a  
24 big point of contention because, of course, back then we wanted  
25 very broad fact sheets and Judge Schneider said, no, no, no,

1 you know, you don't get this for everyone. Once we get to the  
2 bellwether stage, you can then serve more discovery on those  
3 bellwether plaintiffs.

4           So our position is, you know, here we are, and we'll  
5 submit those transcripts to Your Honor when we argue this in  
6 substance in two weeks, but, you know, we -- we certainly have  
7 contemplated this all along and I don't think this is any  
8 surprise. There are -- there is relevant information that we  
9 will need to take these witnesses' depositions. The  
10 plaintiffs' depositions for the bellwethers are being scheduled  
11 imminently, and so we're eager to get this discovery that we  
12 need. We can't really wait until after their depositions later  
13 down the line, you know, for example, when we get into expert  
14 discovery, to start getting this information. The time is now  
15 because we have to depose these plaintiffs.

16           So that's -- that's my response to Mr. Nigh's  
17 comments, but, of course, we'll be able to lay this out for  
18 Your Honor --

19           (Interruption by music playing.)

20           THE COURT REPORTER: Judge, we have some interference.

21           JUDGE VANASKIE: We have some interference. We are  
22 getting some music.

23           MR. NIGH: I promise, that's not me, Your Honor. It's  
24 not Daniel Nigh.

25           JUDGE VANASKIE: Somebody got on hold. I don't know

1 how to troubleshoot this one.

2 MR. NIGH: I think that is Mr. Abraham's Zoom.

3 MR. ABRAHAM: That is definitely not my Zoom.

4 JUDGE VANASKIE: Somebody just put us on hold.

5 UNIDENTIFIED SPEAKER: Yeah, exactly.

6 JUDGE VANASKIE: I wish I could find out who put us on  
7 this.

8 MS. GOLDENBERG: This is Marlene Goldenberg. If  
9 whoever is administering the call has any kind of controls,  
10 they might have the ability to remove the participant.

11 JUDGE VANASKIE: Is Larry available? Is our host  
12 available?

13 THE COURTROOM DEPUTY: Judge, I'm here but I have no  
14 idea who it is.

15 JUDGE VANASKIE: Okay. So we're stymied right now,  
16 talking about these unforeseen technical problems.

17 UNIDENTIFIED SPEAKER: Should we dial back in?

18 JUDGE VANASKIE: Do you recommend that, Larry, that we  
19 just dial back in?

20 THE COURTROOM DEPUTY: We can do that. I could end  
21 the call and we could all call back.

22 JUDGE VANASKIE: All right, let's do that. We have no  
23 alternative other than that. I'll dial back in.

24 (Conference call ended.)

25 (Conference call resumed.)

1 MR. SLATER: Your Honor, it's Adam Slater. I would  
2 suggest if somebody has easy access to the list of people that  
3 are on this call, somebody needs to send an email to everybody  
4 telling them that somebody has put us on hold and is playing  
5 the music. Maybe somebody put us on hold and is doing other  
6 work and is just listening.

7 JUDGE VANASKIE: Right.

8 MR. SLATER: I don't know any other way to handle  
9 this. The music is still playing. The hold is going to be  
10 there every time we dial in.

11 MR. GOLDBERG: Your Honor, this is Seth Goldberg.  
12 Would you like us to circulate a new number for everyone?

13 JUDGE VANASKIE: Can we do that? Yes.

14 MR. GOLDBERG: Yes, we can do that. I can email --  
15 I'll email plaintiffs' counsel and they can distribute to the  
16 plaintiffs' group. We'll distribute to the defendants' group  
17 and to the Court.

18 THE COURT REPORTER: And the court reporter, please.

19 JUDGE VANASKIE: And Camille.

20 MR. GOLDBERG: Yes, we'll make sure that --

21 JUDGE VANASKIE: All right?

22 MR. GOLDBERG: Yes, we will.

23 JUDGE VANASKIE: All right. Thanks, Mr. Goldberg.

24 MR. GOLDBERG: We will do that now.

25 JUDGE VANASKIE: All right. Thank you. Bye-bye.

1 (Conference call ended.)

2 (Conference call resumed.)

3 JUDGE VANASKIE: Camille, are you there?

4 THE COURT REPORTER: Yes, I am, Judge.

5 JUDGE VANASKIE: All right. I'll ask everyone to  
6 please place your phones on mute except when you're speaking.  
7 Please, nobody go on hold, nobody put this call on hold. I'm  
8 surmising that's the problem that we encountered and I don't  
9 want to encounter it again. If you want to tune out, just put  
10 it on mute. You can still -- you don't have to put it on hold.  
11 All right.

12 Let's see if I can pick up where we were on this. We  
13 were talking about the Rule 34 request to the bellwether  
14 plaintiffs. I don't want that to delay matters. I expect that  
15 there will be a response by March 3rd and we'll be able to  
16 resolve this matter no later than our mid-month call, if not  
17 sooner.

18 ELECTRONIC VOICE: Joining the meeting.

19 JUDGE VANASKIE: Does anyone else want to be heard on  
20 this point? Ms. Lockard?

21 MS. LOCKARD: Thank you, Judge.

22 JUDGE VANASKIE: I don't know if you were concluded.

23 MS. LOCKARD: I had concluded my comments. So we  
24 appreciate the opportunity to present this issue to you.

25 JUDGE VANASKIE: All right. Mr. Nigh, did you want

1 to --

2 MR. NIGH: I don't have anything further either.

3 Appreciate it.

4 JUDGE VANASKIE: All right. Very well.

5 Okay. So the next item on the agenda is the dismissal  
6 of peripheral defendants, and you expected to be able to reach  
7 an agreement on an order with respect to this matter.

8 Where does this matter stand and who is addressing it  
9 on behalf of the defendants?

10 MS. GROSSMAN: Hello, Your Honor. This is Megan  
11 Grossman. I am --

12 ELECTRONIC VOICE: Joining the meeting.

13 MS. GROSSMAN: I am speaking on behalf of the  
14 peripheral defendants today and specifically I represent AvKARE  
15 in relation to this issue. And we have been working together  
16 with Marlene Goldenberg on behalf of the plaintiffs to develop  
17 some language to be included in the amendment to the peripheral  
18 defendants dismissal procedure order, and I think we reached an  
19 agreement and we've circulated what we hope is the final  
20 version this morning. So we should be able to submit that to  
21 Your Honor very soon for execution and entry.

22 JUDGE VANASKIE: All right. Thank you very much.

23 Ms. Goldenberg, is there anything we need to discuss  
24 on this matter from plaintiffs' perspective?

25 MS. GOLDENBERG: No, Your Honor. And, again, this is

1 Marlene Goldenberg.

2 Just for context, we had a very similar order that was  
3 entered in the Valsartan litigation. The only difference  
4 between that order and this order that's coming your way --

5 ELECTRONIC VOICE: Joining the meeting.

6 MS. GOLDENBERG: -- that I can see, in the Valsartan  
7 case, by the time this order was entered, we had already gotten  
8 enough information to understand when the contamination began.  
9 Here, we just don't have that kind of discovery or public  
10 information available to us and so there's a caveat that allows  
11 plaintiffs to meet and confer with the peripheral defendants  
12 should we discover that the contamination goes back further  
13 than the relevant time period that's specified in this new  
14 order. Otherwise, as --

15 ELECTRONIC VOICE: Joining the meeting.

16 MS. GOLDENBERG: -- you know, we're on the same page  
17 and we should be able to get you the stipulated order today.

18 JUDGE VANASKIE: All right. Very well. Thank you.

19 All right. The next item on the agenda is the  
20 dismissal of bellwether trial pool plaintiffs. And as I  
21 understand it, there seems to be one issue with respect to the  
22 draft order --

23 ELECTRONIC VOICE: Joining the meeting.

24 JUDGE VANASKIE: -- dealing with how to handle  
25 dismissal of bellwether plaintiffs. And who will be addressing

1 this matter on behalf of the defense?

2 MS. COHEN: Good morning, Your Honor. This is Lori  
3 Cohen with Greenberg, Traurig on behalf of the defense on this  
4 issue.

5 JUDGE VANASKIE: All right. Very well.

6 MS. COHEN: Thank you, Your Honor.

7 So you are right that there is the one issue and we  
8 are pleased to see that in plaintiffs', Mr. Slater's,  
9 submission that they agree that, you know, on this core issue  
10 there's only one dispute and that relates to what we attached  
11 to our letter yesterday that was submitted, Paragraph 7 of  
12 this, I'm sure you could see, and it is just one issue and one  
13 paragraph but it's an important one, we believe, and it relates  
14 to the dismissal. And our request, and we think it's a  
15 reasonable one, we think it's a necessary one, you know, I  
16 don't know if this is an issue to go to Judge Kugler but,  
17 obviously, we'll be happy to present it to him but also preview  
18 it to you, as you're asking, but it's an important issue  
19 because under Rule 41, you know, plaintiffs can't just simply  
20 unilaterally dismiss. So we do think this is necessary to --

21 ELECTRONIC VOICE: Joining the meeting.

22 MS. COHEN: -- ensure that there's an even playing  
23 field and we're just asking that language that we've included  
24 there, that is that bellwether trial pool cases may be  
25 dismissed only by court order, you know, on the terms that the

1 Court considers proper, and we don't really understand why the  
2 plaintiffs would resist this.

3           Now, they suggest, well, there's not a concern here  
4 for the defense because, you know, you can replace a bellwether  
5 case without a defense pick. And I think we've all agreed on  
6 that in this litigation that if someone -- you know, if  
7 plaintiffs dismiss a defense pick, we would be entitled to  
8 replace it with a defense pick, which is great and we agree  
9 with that, of course. But more importantly here, even with  
10 that, let's say, you know, exeval, if you will, it's still  
11 important that they not be able to just unilaterally dismiss  
12 without getting a court order or our consent. And the reason  
13 is, we're all investing a lot of time, money, resources, energy  
14 into different bellwether plaintiffs, we've already started  
15 working them up on our end, and we think it's important that we  
16 have this provision in here to ensure that plaintiffs are not  
17 just, you know, again, unilaterally dismissing a case.

18           Also, not to get into this issue right now because  
19 we're still meeting and conferring on it, but given Judge  
20 Kugler's recent order, there are a certain number of the  
21 bellwether plaintiffs who are subject to the recent order that  
22 he issued, his February 3rd order in Opinion Number 5 on the  
23 motion to dismiss on the subsumption claims and defenses. And  
24 so, again, we'll put that off for a later discussion because  
25 we're still moving to that, but we think it's vitally important

1 that plaintiffs not be able to just dismiss cases. And this  
2 is, again, very consistent with discovery rules, Rule 41, we  
3 have already invested time and, you know, and make sure that we  
4 have an even playing field and nobody can kind of, you know,  
5 game the system in any way and that's very important in the  
6 bellwether selection process that we're involved in.

7 So I'll pause there to see if there's any reaction  
8 but, again, this is an important provision, it's only one  
9 provision, and we've worked really hard to come to agreement on  
10 the rest of it, but we do insist that this being included as  
11 well, subject to the Court's approval, of course.

12 JUDGE VANASKIE: All right. Who's going to address  
13 this on behalf of the plaintiffs?

14 ELECTRONIC VOICE: Joining the meeting.

15 MR. SLATER: Your Honor, it's Adam Slater. I'm going  
16 to very briefly address the last --

17 ELECTRONIC VOICE: Joining the meeting.

18 JUDGE VANASKIE: Hold on. Hold on a second, Mr.  
19 Slater. There are a lot of people still joining.

20 ELECTRONIC VOICE: Joining the meeting.

21 MR. SLATER: Your Honor, again, it's Adam Slater. I'm  
22 going to briefly address the last thing Ms. Cohen said and then  
23 I'm going to hand off, I believe.

24 The last thing that Ms. Cohen threw in, and they threw  
25 into their letter, is what I can only characterize as an absurd

1 interpretation of Judge Kugler's order, and I think it's  
2 something that we're going to have to raise with him when he  
3 gets on because the defense seems to be trying to slide into  
4 this -- into this agenda letter and slide into this argument a  
5 setup for a real serious dispute over something that we don't  
6 understand from a logical standpoint what they're saying.

7           They're claiming that the plaintiffs from various  
8 states have had all their claims dismissed, including New  
9 Jersey and Louisiana and Ohio and Tennessee.

10           Just to briefly tell you, what they're saying is when  
11 Judge Kugler dismissed, for example, the strict liability claim  
12 in a plaintiff from New Jersey's case, their interpretation is  
13 that all of the claims have been dismissed as opposed to what  
14 Judge Kugler ruled, which is, in New Jersey you plead the New  
15 Jersey Product Liability Act and you plead what comes within  
16 the -- within that claim, but it's also subsumed by the PLA in  
17 New Jersey, other than the express warranty claim, which we'll  
18 note the decision clearly didn't dismiss that claim but  
19 actually found that the representation that this product was  
20 the generic equivalent of Valsartan was a breach of the express  
21 warranty as a matter of law. We read the decision that way.

22           So, certainly, the plaintiffs haven't had their cases  
23 dismissed. All we're going to do is replead. For example, for  
24 the New Jersey plaintiff, the claims would be repleaded as New  
25 Jersey Product Liability Act claims which will include

1 manufacturing defect, design defect, failure to warn, the loss  
2 of consortium claims are embedded within that, as well as the  
3 right to claim punitive damages and compensatory damages.

4 So I wanted to get that out there first and I think  
5 it's something we probably should discuss with Judge Kugler  
6 later so that we don't have to have our discussions with the  
7 defense burdened by -- by what the defense -- by their  
8 interpretation.

9 I'll hand off now to my colleagues. I'm not sure if  
10 it's Mr. Nigh or who's going to address the rest, which is the  
11 mechanical dismissal process.

12 MS. COHEN: And, Your Honor --

13 MR. NIGH: This is Daniel Nigh.

14 JUDGE VANASKIE: Hold on. Hold on.

15 THE COURT REPORTER: I'm sorry --

16 JUDGE VANASKIE: Yes. Is that Camille?

17 THE COURT REPORTER: Yes, Judge, I wasn't sure who was  
18 about to speak. I heard two different voices.

19 MR. NIGH: This is Daniel Nigh.

20 JUDGE VANASKIE: All right. Mr. Nigh.

21 MR. NIGH: Yes. I'm going to address the other part  
22 of the argument, which is, you know, the dismissal and looking  
23 to include some dismissal language into the order.

24 Frankly, we think this is just premature completely  
25 because at this time we don't have a single case that has been

1 dismissed and we don't know if and when that case may be  
2 dismissed.

3 In addition, we also have a second part that we're  
4 going to have to address because of right now we have 28 picks.  
5 That's not going to be the trial bellwether pool. Typically,  
6 trial bellwether pools are much smaller in scope. They end up  
7 being something in the nature of six or eight cases. We have a  
8 second part that we're going to propose in terms of how we get  
9 from 28 cases to the six or eight cases, and we're going to  
10 attempt to propose that by next week so that we can all be  
11 looking at, you know, what is the second part of this plan.

12 In terms of the dismissals, you know, first, I don't  
13 think it's a one size fits all. We have to understand when --  
14 you know, if and when there's a dismissal to understand how to  
15 address it. You know, dismissals can happen much later in the  
16 process, they can happen early in the process, and, frankly, as  
17 of right now, we don't know how to address it because we don't  
18 know when that dismissal is going to occur. I think we also  
19 believe that the second part of the plan will address some of  
20 these issues to the extent that strikes are included or we have  
21 random selection, then replacing a dismissal with another pick  
22 is going to be, you know, not important and not something we  
23 need to do and, frankly, would be a waste of time, in our  
24 opinion. So that's the thing. Until we get to that second  
25 part of the plan, it's difficult to be able to address the

1 dismissal.

2           The other part of the argument that I would address  
3 is, you know, this requirement to have a court order before  
4 somebody can dismiss their case with prejudice. That, frankly,  
5 does not occur in the vast majority of mass torts. I have  
6 represented numerous bellwether plaintiffs. I have seen, you  
7 know, numerous plaintiffs in multiple different MDLs be able to  
8 dismiss their case with prejudice. Frankly, sometimes that  
9 occurs if and when someone has a conversation with their client  
10 and the client, for whatever reason, decides they don't want to  
11 go forward with depositions or whatever, whatever the stage is  
12 there, and they have a right to be able to dismiss their case  
13 with prejudice if they so choose. So to have some extra  
14 hurdle, frankly, we don't think is -- is necessary and I think  
15 that's a misreading of Rule 40 -- Rule 41.

16           So with that, that's our position. Frankly, at this  
17 point, though, I would just reiterate, we haven't had a single  
18 person at this stage, you know, voice that they're going to  
19 dismiss a case. I haven't heard that from the defendants.  
20 Frankly, I think it's premature to address this because I don't  
21 think it's a one size fits all until we know if and when there  
22 is a dismiss.

23           MS. COHEN: And, Your Honor, if I may respond briefly.  
24 This is Lori Cohen.

25           JUDGE VANASKIE: Ms. Cohen.

1 MS. COHEN: Thank you very much, Your Honor. And I  
2 hope that the court reporter can hear me as well.

3 THE COURT REPORTER: Is this Ms. Cohen?

4 MS. COHEN: Yes.

5 THE COURT REPORTER: Thank you.

6 MS. COHEN: Yes. To respond to Mr. Nigh first, and  
7 then I'll circle back to Mr. Slater, you know, I, too, have  
8 been in a lot of MDLs like them and a lot of -- I've been in a  
9 lot of bellwether pools and worked on a lot of orders like  
10 this. There should be no apprehension or objection to the  
11 dismissal request that once the bellwether picks have been  
12 made, as they are now, and we're underway in terms of discovery  
13 and all the efforts I described, that any dismissal, even with  
14 prejudice, be by court order pursuant to Rule 41. I mean,  
15 basically, we have -- we have responded to the complaints, now  
16 we've done the 28 picks, and -- and to have this provision in  
17 here should not cause them any apprehension unless they're  
18 planning something, unless they're planning to, you know, to  
19 try to dismiss cases if they don't like how things go in  
20 discovery. So, again, this is the same standard as under Rule  
21 41.

22 Obviously, we, all of the attorneys in this  
23 litigation, trust in the system, trust in Judge Kugler, trust  
24 in you. And so to have a provision that says any dismissal of  
25 this small winnowed-down group of 28, which everyone is working

1 on, has to be approved by the Court should not cause anyone any  
2 concern or consternation. And the fact that it does, and  
3 they're not willing to have a paragraph in here, raises a lot  
4 of concern on the defense side. We think that this is  
5 necessary and we believe that it should be included. And to  
6 say, well, we haven't had any cases dismissed yet is all well  
7 and good, but we are now, you know, again, getting more  
8 immersed in the bellwether process and we think it's important  
9 that we have this provision in here so that they cannot just  
10 simply unilaterally dismiss just like they could not, once  
11 responsive pleadings are made in a federal court case, under  
12 Rule 41, without addressing it with the Court and maybe the  
13 Court allows relief. So we think that's vitally important.

14 As to Mr. Slater's point, again, I wasn't slipping  
15 anything in in my argument or our letter brief to Your Honor.  
16 Again, that was included as sort of a just -- just, you know,  
17 flagging the issue, if you will, for future discussion because  
18 we do have a divergent view of the order and the implications.  
19 But if the plaintiffs are going to replead, you know, we'll  
20 continue to meet and confer, but we have a divergent view  
21 between the defense and plaintiffs on the meaning of the order,  
22 but that doesn't have to be addressed today because we're  
23 absolutely willing to continue discussing that. We just wanted  
24 to raise that. It doesn't implicate this order issue that  
25 we're discussing because, again, this is just one provision

1 consistent with the federal rules and consistent with,  
2 basically, how Judge Kugler has addressed things in this  
3 litigation to date.

4 JUDGE VANASKIE: All right. So it seems the matter on  
5 the opinion on Motion to Dismiss 5 or that fifth opinion,  
6 that's premature for any discussion that's certainly in front  
7 of me today. It's just a question of -- and I'm having trouble  
8 understanding from the plaintiffs' standpoint what is  
9 objectionable about requiring a court order as part of the  
10 dismissal of a bellwether plaintiff. I'm trying to see how  
11 you're -- how you, on the plaintiffs' side, are harmed by  
12 including that provision. Can somebody educate me on that?

13 MR. NIGH: Yes, Your Honor. Frankly --

14 THE COURT REPORTER: I'm sorry. Is this Mr. Nigh?

15 JUDGE VANASKIE: Who is this?

16 MR. NIGH: I'm sorry. Sorry, Your Honor. This is  
17 Daniel Nigh.

18 Frankly, we believe that it is just an extra hurdle  
19 that's not a requirement that you must have a court order  
20 before, you know, filing a dismissal with prejudice. And,  
21 frankly, as we looked at *Benicar* and what occurred in *Benicar*,  
22 you know, dismissals with prejudice were filed without getting  
23 a court order. It's just one extra hurdle that we think is  
24 unnecessary. That's all.

25 JUDGE VANASKIE: All right. Anything else on this

1 issue?

2 (No response.)

3 JUDGE VANASKIE: I'm going to raise the issue with  
4 Judge Kugler. I don't see -- if it's simply an extra hurdle,  
5 all right, it's an extra step, but I don't see prejudice from  
6 jumping over that hurdle. And so I'd be inclined -- I'm just  
7 letting you know right now, I'd be inclined to say that'd be an  
8 appropriate provision of the -- how we deal with the bellwether  
9 plaintiffs and the bellwether plaintiffs that may drop out of  
10 the matter.

11 All right. Let's move to the next issue then on the  
12 -- on the agenda. And I did receive today a revised letter  
13 from defense counsel, from Mr. Goldberg, dealing with the  
14 Aurobindo discovery status, but I've jumped ahead. We're  
15 really on the Hetero discovery status, Item Number 5 on the  
16 agenda.

17 My notes indicate that you're continuing to work  
18 through this issue. The plaintiffs have indicated that this  
19 may have an adverse impact on schedule if it can't be resolved  
20 promptly.

21 Where do we stand today with respect to the Hetero  
22 discovery issue? Who will be addressing this on behalf of  
23 Hetero?

24 MS. SHAH: Good morning, Your Honor. This is Nakul  
25 Shah, counsel for Hetero Drugs and Hetero Labs.

1 JUDGE VANASKIE: All right.

2 MS. SHAH: May I proceed?

3 THE COUR REPORTER: I'm sorry. Who is this?

4 MS. SHAH: It's Nakul Shah, N-A-K-U-L S-H-A-H, counsel  
5 for Hetero Drugs and Hetero Labs.

6 JUDGE VANASKIE: All right.

7 MS. SHAH: Your Honor, during our mid-month  
8 conference, plaintiffs informed you of several deficiencies  
9 that they raised in Hetero's document production. Since that  
10 time, we've engaged in several meet and conferrals and we've  
11 communicated by email as well to attempt to address each  
12 specific concern raised by the plaintiffs. We've had very  
13 productive conversations and, thus far, we produced certain  
14 corrected documents that plaintiffs have requested.

15 Additionally, we intend to make a subsequent document  
16 production either today or tomorrow morning as well as address  
17 additional specific issues raised by the plaintiffs.

18 We're continuing to work in good faith with plaintiffs  
19 and anticipate remedying all of the issues that they've raised.

20 JUDGE VANASKIE: All right. Who wants to be heard on  
21 behalf of the plaintiffs?

22 MR. SLATER: This is Adam Slater, Your Honor.

23 As we stated in our letter, we are willing to work  
24 with Hetero's counsel for a very short period of time --

25 JUDGE VANASKIE: Right.

1 MR. SLATER: -- in the hopes that they can remedy  
2 these issues. As we expressed, we are skeptical because of the  
3 extent of the issues and we believe that as they dig deeper  
4 they're going to realize that there -- from what we've learned  
5 in these discussions, that there is some significant steps that  
6 it looks like did not occur. For example, we have no  
7 confidence that there was actually investigations done to  
8 determine where all of the key data was housed to make sure all  
9 of those applications and databases were produced, for example.  
10 We believe that there's going to turn out to be many sources of  
11 documents we don't have.

12 So we're certainly encouraged that the -- that the  
13 problems with the metadata and productions, et cetera, have  
14 been acknowledged, but we, again, are concerned, A, what else  
15 is going to turn out to be a problem as we dig deeper; and,  
16 two, how quickly can this be remedied, because some of these  
17 issues are very deep seated. We're talking about redoing the  
18 metadata for thousands and tens of thousands of documents and  
19 getting overlay files produced, et cetera, in a format that can  
20 be useable without wiping away the data that we had previously,  
21 these are technical challenges that can be overcome; but  
22 because of the way things have gone so far, we're concerned.

23 So we really wanted to just make very clear and make a  
24 clear record what while we're working with Hetero and telling  
25 them what we're finding as we look, we do want to be able to

1 have the right to come back to the Court, which I understand we  
2 do, if this can't be fixed quickly. And we did want to,  
3 obviously, advise the Court that, for example, there's a  
4 deposition scheduled next week wherein we're supposed to be  
5 questioning a witness about the application of good  
6 manufacturing practices and the application of internal  
7 standard operating procedures and quality manuals and we don't  
8 even have all of those documents yet, and, you know, obviously,  
9 we're -- we're a week away so it's unlikely that we can pull  
10 that together in the course of just a few days and be ready to  
11 take an important 30(b)(6) deposition.

12 So we thought it prudent to advise the Court and to  
13 make sure that that was okay if we need to amend the schedule  
14 due to these document production issues.

15 JUDGE VANASKIE: Well, certainly, there has to be  
16 flexibility if these document issues persist in terms of  
17 precluding prejudice to the plaintiffs. And if it's a matter  
18 that you believe warrants some immediate attention and  
19 intervention on the Court's end, please let me know and we will  
20 do that. Right now, as I understand it, you're raising the  
21 issue because it's a major concern but you're not asking for  
22 any relief; is that correct?

23 MR. SLATER: That's correct, Your Honor.

24 JUDGE VANASKIE: All right.

25 All right. Well, let's move on then, if that's all

1 right.

2 Anything else on this issue from Hetero's perspective,  
3 Ms. Shah?

4 MS. SHAH: Your Honor, we are open to discussing with  
5 plaintiffs if there's a need to reschedule the depositions that  
6 are coming next week; but we do anticipate significant progress  
7 with the issues that have been raised during the remainder of  
8 this week.

9 JUDGE VANASKIE: That's great to hear. Thank you.

10 All right. The next item I have on the agenda is the  
11 Camber deposition status. And I don't have any notes on this.  
12 My notes say, it's being worked out. So where do we stand on  
13 this? Who will be addressing this on behalf of the plaintiffs?

14 MR. SLATER: Your Honor, it's Adam Slater again.

15 I think that there's really nothing to discuss. The  
16 30(b)(6) witness is agreed to and Camber has provided a witness  
17 and some dates yesterday and we're going to just get back and  
18 confirm the dates, so my expectation is that there should not  
19 be anything to discuss with the Court.

20 JUDGE VANASKIE: Great. Who is addressing this on  
21 behalf of Camber?

22 MS. GROSSMAN: Hi. This is Megan Grossman from Lewis,  
23 Brisbois on behalf of Camber Pharmaceuticals. And, yes, I  
24 agree with Mr. Slater. He has the date --

25 ELECTRONIC VOICE: Joining the meeting.

1 MS. GROSSMAN: -- or we will confer about a date that  
2 works for both of us.

3 JUDGE VANASKIE: All right. Very well. Thank you.

4 All right. Now we're up to Aurobindo, Aurobindo  
5 discovery status, and I have a revised letter from Mr. Goldberg  
6 dealing with this question.

7 Now, who will be addressing this issue on behalf of  
8 plaintiffs?

9 MS. GOLDENBERG: Your Honor, this is Marlene  
10 Goldenberg.

11 JUDGE VANASKIE: Okay.

12 MS. GOLDENBERG: Since we last spoke, Your Honor, we  
13 have been able to reach an agreement with Aurobindo about some  
14 document hit-counts and you may have noticed they chose not to  
15 file a brief on that for that reason, and they've agreed to  
16 provide hit-counts to us by the end of the week. So we're  
17 pleased about that.

18 We've also had a number of discussions about  
19 custodians and we have agreements, I'm looking at our letter,  
20 so that's Docket 967 at Page 7 and 8, you'll see that there are  
21 certain custodians that are agreed upon and what we're asking  
22 for today is for you to call balls and strikes on the rest of  
23 them.

24 So the list that we're looking for your guidance on  
25 appears on Page 8 of our letter, and you'll notice that what

1 we're looking for are all of the people who are in the risk  
2 assessment report who were chosen by Aurobindo specifically to  
3 look into the very issue that is the reason that we're all here  
4 in this, you know, telephonic courtroom today. So the -- and  
5 the custodians that we're asking for do not, to my  
6 understanding, overlap with the custodians that have already  
7 been agreed to.

8 I did also want to point out, Your Honor, that  
9 Aurobindo made a point in their letter undecidedly that  
10 apparently this is a burdensome number of custodians but it  
11 pales in comparison to what the other defendants have already  
12 agreed to give us.

13 Mylan, which is a pretty comparable entity in this  
14 case because they're vertically integrated, they make their own  
15 API and their own finish dose product, give 52 custodians, and  
16 you can see all of their names, if you're curious, at Document  
17 Number 328, Exhibit B, in the very large .pdf that you might  
18 open up as you're referring back to this transcript, is on Page  
19 22 and 23 of that .pdf.

20 So what we're asking for here is really a fraction of  
21 what we've gotten as to other defendants and so I don't think  
22 this is a very heavy lift, but we just aren't going to be able  
23 to get the full picture of the case if we're only looking at  
24 seven or eight people's documents. This -- this is an issue  
25 that, of course, occurred in the course of the manufacturing

1 process and you'll notice that the job titles following the  
2 people that we've asked for are all within that -- that part of  
3 the company who do that.

4           The last thing that we've asked for are individuals  
5 who are involved with Lantech and Aurobindo's letter made it  
6 look like our ask was very broad but you'll see on Page 9 of  
7 our letter that it's actually quite targeted. We're looking  
8 for people who fall into four categories of responsibility. So  
9 we want to know who was in charge of signing that contract and  
10 we'd like to see their documents because we'd like to know what  
11 the terms of that contract were, what specifications were given  
12 to the company and whose responsibility it was to do each  
13 thing; who was in charge of doing due diligence on Lantech in  
14 making sure that they were complying with their quality and  
15 cGMP obligations; who was in charge of giving Lantech  
16 specifications for use, recovery and recycling of those  
17 solvents; and then last, who is in charge of investigating the  
18 problems when they happen. And so I don't know if that's three  
19 people or if it's five people. By the sounds of our  
20 discussions with Aurobindo, it doesn't sound like we're talking  
21 about 50 so I don't think that this is a heavy lift. But these  
22 people, whoever they are, because their identities have not  
23 been disclosed to us, despite asking many times, are really the  
24 core people in this case and we just need to know who they are  
25 and we need to get their custodial files produced so we can go

1 and take these depositions.

2 JUDGE VANASKIE: All right. Who's addressing this on  
3 behalf of Aurobindo?

4 MS. HEINZ: Hello. This is Jessica Heinz for the  
5 Aurobindo parties.

6 JUDGE VANASKIE: All right.

7 MS. HEINZ: Marlene is correct, we have continued to  
8 meet and confer since the status conference --

9 ELECTRONIC VOICE: Joining the meeting.

10 MS. HEINZ: -- on February 17th. The parties were  
11 able to reach an agreement on the hit-count information and we  
12 do intend to provide that by the end of this week.

13 We have also had several productive meet and confers  
14 regarding Aurobindo Pharma Limited list of custodians.

15 Just to give Your Honor some background, Aurobindo  
16 Pharma Limited is located in India. They have taken the  
17 position throughout this litigation that personal jurisdiction  
18 is lacking. We have been discussing that with plaintiffs  
19 recently. We've sent them a proposed stipulation to --  
20 regarding preservation of jurisdictional -- jurisdictional  
21 defenses and including our proposed list of the custodians in  
22 there. They told me yesterday that they have no problem with  
23 that stipulation and they planned to send it back to me  
24 yesterday. I don't know if they realized on the phone that it  
25 included this list of custodians which may be why I did not

1 receive the signed version yesterday, but that is something  
2 that the parties have been discussing and we appreciate that  
3 the plaintiffs are willing to execute a stipulation regarding  
4 preservation of jurisdictional defenses because I think we can  
5 all agree that parties walk a fine line if they're engaging in  
6 discovery when they're taking the position that personal  
7 jurisdiction is lacking.

8           So we are trying to make a good-faith effort to keep  
9 the litigation moving. We have offered seven custodians from  
10 our India entity. That is in addition to 15 that we have  
11 already agreed to and produced to plaintiffs' counsel. And  
12 then we have also agreed to another U.S. custodian who we will  
13 be producing. I'm hoping that we can get that done by the end  
14 of this month. And the timeline is another issue.

15           I don't want to jump ahead but what's unduly  
16 burdensome for my client is, you know, we have produced a lot  
17 of information already. This is a lot of additional  
18 information that they're asking for. We have told them that we  
19 will identify the appropriate Lantech Pharmaceutical -- the  
20 person or persons responsible for interfacing with them. I  
21 just don't have that information yet. I'm still working on  
22 getting it.

23           We actually provided a list to plaintiffs back in  
24 August 20 -- it was August 25 of 2020 I emailed the plaintiffs  
25 Listserv, as well as Lane Hilton, with a list of five proposed

1 custodians, all of whom are on the list that we are currently  
2 proposing, and I never received a response. The next time  
3 plaintiffs raised this wasn't until February 2nd, 2021.

4 So from my perspective, I could have been addressing  
5 this with them back in August of 2020. Now they want me to  
6 agree to all of these custodians and produce everything by  
7 March 12 and that just seems unduly burdensome, unfairly  
8 prejudicial and unreasonable. We can certainly work out --  
9 we're happy to continue to meet and confer with them about a  
10 timeline for production of the ones that we've agreed to  
11 produce; I'm confident that we can get those done by mid-May;  
12 but we think their ask right now for the Court to enter an  
13 order on all of this is a little premature and unreasonable.

14 JUDGE VANASKIE: I put myself on mute. All right.  
15 And the hiccups continue.

16 Do you want to respond, please.

17 ELECTRONIC VOICE: Joining the meeting.

18 MS. GOLDENBERG: This is Marlene Goldenberg again.

19 JUDGE VANASKIE: Yes, Ms. Goldenberg.

20 MS. GOLDENBERG: So I just wanted to note that, you  
21 know, there was, I think, a misunderstanding about Aurobindo's  
22 willingness to produce in light of that personal jurisdiction  
23 objection. I'm glad that we're now at the point where we're  
24 talking about when rather than if. And, you know, to the  
25 extent we can move some depositions back, we might be willing

1 to do that a little bit to accommodate the production schedule;  
2 but my fear is that if we push these too far, you know, we're  
3 going to end up exactly where we started when defendants came  
4 and asked for that 60-day reprieve, which was, we have all  
5 these depositions squished up at the end of the schedule and no  
6 time in between. And so there might be a little bit of  
7 flexibility on the timeline that I provided in our agenda  
8 letter. And, again, as I also indicated in our agenda letter,  
9 we are willing to prioritize certain custodians so that  
10 depositions, particularly fact depositions, of witnesses who,  
11 you know, know things that are related to the -- or might be  
12 able to testify related to things in the custodial files of  
13 certain custodians we requested, we could move those forward  
14 and potentially save the 30(b)(6)s to the end so that we have  
15 time to meaningfully review everything. But what I didn't hear  
16 Jessica say was that these custodians are not appropriate from  
17 a substantive perspective, and I think that's important because  
18 these are important people. They are the very individuals  
19 designated by the company who deal with the issues that are the  
20 reason that we're here today.

21 And, again, this is an issue that occurred over at  
22 Aurobindo India. The fact that they're an Indian company  
23 doesn't make them any different from the other API  
24 manufacturers who are also overseas, and so I don't think  
25 that's a reason to not produce documents.

1           So, again, what we're asking for are the production of  
2 the custodial files, in our letter, as well as the names and  
3 custodial files of the people that touch on the four points in  
4 our agenda letter, and we'd like a phased production schedule  
5 that will allow us to move forward with depositions and not  
6 have to be in a position where we either leave depositions open  
7 or come back to the Court and ask for another extension.

8           JUDGE VANASKIE: All right. Thank you.

9           Anything else, Ms. Heinz?

10          MS. HEINZ: I just want to add that the people that we  
11 have proposed -- I apologize. The people that we have proposed  
12 are the heads of operations and the heads of quality control  
13 and quality assurance. The operations heads are -- they cover  
14 the manufacturing and testing departments as well. So we have  
15 offered the pertinent people, the pertinent custodians, and we  
16 do not think that it's necessary to add these other custodians,  
17 particularly given the burden and delay in our offer to produce  
18 custodians that we made back in August of 2020.

19          JUDGE VANASKIE: All right. Thank you.

20          On this particular issue, I've been asked to call  
21 balls and strikes and I think it is appropriate to try to get  
22 something resolved. I think plaintiffs have made a sufficient  
23 showing that the files of the custodians, the persons who are  
24 identified on Page 8 of plaintiffs' letter, be produced as well  
25 as the information that's requested on Page 9 of the letter

1 dealing with four specific matters. And so we'll require that  
2 those files be produced or the document ESI be produced.

3 One of the questions I have is the timing for this.  
4 Plaintiffs have asked for custodial files of a particular  
5 individual and for Lantech-related custodians be completed by  
6 March 5th. Is that feasible from the perspective of Aurobindo?

7 MS. HEINZ: Hi, Your Honor. This is Jessica Heinz  
8 again.

9 No, that's not feasible. We have -- we're in the  
10 process of collecting the seven that we have agreed to. We  
11 will have to collect all of the other ones if understanding --  
12 if I'm understanding the Court's ruling on those. We have  
13 collected two so far, run the search terms on those, and I'm  
14 already looking at 400,000 documents to go through. It's  
15 simply not possible to do that in just a few weeks, which is  
16 why I proposed that we could produce all seven of the ones that  
17 we have already agreed to by mid-May. I think that is doable.  
18 It's just going to be -- just knowing how broad the search  
19 terms are, as a result of that, hitting on a lot of documents  
20 that we have to go through, and so, in light of that, we would  
21 just ask that the Court take that into consideration and let us  
22 have until mid-May to at least produce these and then we can --  
23 the seven that we've agreed to; and then if we could have  
24 additional time after that to produce the others, I think that  
25 that would be fair, you know, considering that we could have

1 addressed this back in August and been -- you know, agreed to  
2 something back then and been reviewing and producing throughout  
3 this whole time.

4 JUDGE VANASKIE: All right. Ms. Goldenberg?

5 MS. GOLDENBERG: Yes. Your Honor, we have a deadline  
6 of May to complete our depositions. And so while, you know, we  
7 -- we want to work with Aurobindo and have done our best to do  
8 that in the past, our backs are now a little bit up against the  
9 wall and we want to make sure that we honor the deadlines that  
10 were just put in place by the Court.

11 And so, again, you know, we're willing to face this  
12 but the numbers that are being thrown out right now of  
13 documents are -- again, they're low compared to what we've seen  
14 from other defendants. And, you know, all of us on the  
15 plaintiffs' side, and I think on the defendants' side, have  
16 been in positions at times where we've had to bring on a few  
17 extra people to make sure we get things done. And, you know,  
18 if they put adequate resources towards this project, I have  
19 every confidence that they'll be able to get it done.

20 JUDGE VANASKIE: All right. Well, what I'll do is I'm  
21 going to issue an order that requires the production of that  
22 which is sought in this -- on Pages 8 and 9 of the plaintiffs'  
23 letter. It'll be more formal than what I'm indicating now.  
24 And I'll require that the production of the custodial files of  
25 the individual identified on Page 10 and the Lantech-related

1 custodians be completed by March 12th, and that the remaining  
2 productions be completed by March 19th; but we'll keep -- we'll  
3 continue to be flexible with respect to the burden that this  
4 may impose but this needs to be done and we have a schedule and  
5 I simply could not agree that document production would be  
6 delayed to mid-May given the current deadlines. So I will  
7 issue an order to that effect later today or tomorrow.

8 All right. Let's move on to --

9 MS. GOLDENBERG: Thank you, Your Honor.

10 JUDGE VANASKIE: Let's move on to the next issue on  
11 the agenda, which is the privilege log issue, and this is a  
12 matter that you've teed up for me and I need to resolve.  
13 You've given me great briefs on the matter and I will resolve  
14 that promptly.

15 Is there any -- I know defense briefed this issue  
16 again in the agenda letter. Did anyone want to be heard on  
17 this particular issue before we move on? Let's ask from the  
18 plaintiffs' perspective since this was briefed by the defense.

19 MR. SLATER: Hello, Your Honor. I would think that  
20 I'm comfortable -- this is Adam Slater. We're comfortable not  
21 arguing any further.

22 JUDGE VANASKIE: Okay.

23 MR. SLATER: It's been briefed. My concern would be  
24 if anybody on either side starts to argue, the other side will  
25 need to respond. So assuming both sides can agree not to say

1 anything, you know, we're fully -- you know, we're fully fine  
2 with just letting Your Honor decide it based on the briefs and  
3 the prior arguments that you've heard.

4 JUDGE VANASKIE: All right. Very well.

5 Anything on the defense side?

6 MS. LOCKARD: Well, I don't -- this is Victoria  
7 Lockard, Your Honor, for Teva, at Greenberg.

8 I don't want to open a can of worms on this. I would  
9 just say, you know, we did feel the need to respond in our  
10 submission because plaintiffs had provided an additional brief.  
11 So now they've provided you with two briefs, we've provided you  
12 with one and then we addressed it in our CMC submission. If  
13 there are any questions as Your Honor is going through the  
14 briefing, you know, particularly about any of the metrics or  
15 numbers that were provided, you know, we're available to answer  
16 those questions. I know in some instances, you know, Judge  
17 Schneider would just have a call to follow up on questions he  
18 might have had. So I, you know, welcome that if there's  
19 anything we can answer for you as you go through those; but,  
20 otherwise, I don't think it's a good use of time to get into  
21 the details of the arguments. I think both sides did a good  
22 job laying out their position on paper.

23 JUDGE VANASKIE: Agreed. And I like that suggestion,  
24 Ms. Lockard, that if I, as I get into this, I believe it would  
25 be helpful to have a discussion, we'll have a discussion just

1 on this particular issue, we'll schedule something. But for  
2 now, we're planning on resolving it on the papers.

3 The next issue I have is the ZHP protective order  
4 motion, which is right in front of me, and you all did a great  
5 job letting me know what I need to look at to resolve this  
6 matter. I didn't intend to have any discussion on this.

7 Did anybody from the defense side want to add anything  
8 with respect to this particular matter?

9 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I  
10 will just say I took from Your Honor's comment last week that  
11 you would ask us if you had any questions about the briefs,  
12 that the issue was then fully briefed, and I was surprised to  
13 see that plaintiffs put into their brief, letter brief,  
14 yesterday a discussion about two of the documents that were  
15 already --

16 JUDGE VANASKIE: Yes.

17 MR. GOLDBERG: -- submitted to the Court. I -- I  
18 don't need to address those documents, unless Your Honor would  
19 like me to, except to say that they really don't alter the  
20 conclusion. The ZHP parties did not misrepresent anything  
21 about those documents. The two documents that plaintiffs  
22 raised, plaintiffs are misconstruing our point about those  
23 documents. While Ms. Hu may have the approval authority  
24 internally, she does not have the authority to approve  
25 externally without being delegated that authority by her

1 superiors. And, you know, the two documents that plaintiffs  
2 have referred to don't alter that. And we would just point  
3 Your Honor to the declaration of Wang Ma at ECF 765-3 where she  
4 discusses the authority of Ms. Hu, Mr. Tang and Ms. Xu, and I  
5 will leave it at that, Your Honor.

6 JUDGE VANASKIE: All right. Anything from the  
7 plaintiffs on this?

8 MR. SLATER: Hello, Your Honor. Adam Slater.

9 I mean, I guess we have a difference -- we have a  
10 difference on those documents. Why did we reference it in a  
11 short paragraph or two in our letter? Because something was  
12 stated in the reply that we thought required clarification.  
13 The fact that there's something put into this letter I don't  
14 think should be such a large surprise to defense counsel, as  
15 they basically did exactly the same thing in this section and  
16 provided several pages of additional argument on the privilege  
17 log issue where the briefing was closed on that as well. So  
18 I'll just, you know, point to that as I think we should try to  
19 be consistent in our arguments.

20 These witnesses, we think we've clearly established  
21 that they've reached the level of managing agent which is not a  
22 very high standard and we showed that these witnesses had that  
23 authority and, you know, we rely on our briefs and we await  
24 your decision.

25 JUDGE VANASKIE: All right. Very well. Thank you.

1 I know I need to resolve these matters. I feel fully  
2 recovered from my bout with COVID and I worked full time the  
3 last two days, but that's the first two days of full time, but  
4 we will get to this really quickly.

5 The last item has to deal with the service of the  
6 losartan/irbesartan complaints on the foreign defendants and I  
7 have a spreadsheet that I have printed out that I don't have in  
8 front of me right now dealing with the status of this. It  
9 seems to me this should be a matter that's fairly resolvable.

10 What needs to be done to get an order in place on this  
11 matter from the plaintiffs' perspective?

12 MS. GOLDENBERG: Your Honor, this is Marlene  
13 Goldenberg, and I will start by saying that I agree with you.  
14 I don't think this is a tough issue.

15 We, as you can see on the spreadsheet, have initiated  
16 or completed service on all of the defendants at this point.  
17 We asked, I think it was about a month ago, for the foreign  
18 defendants to -- who are already in this case because of  
19 valsartan to agree to just accept service through their  
20 attorneys and many of them have not responded, and so this  
21 issue is really just getting teed up so that we can bring this  
22 issue to a close. And then there's also an issue of foreign  
23 defendants who are not in the case.

24 And so it's a two-part ask. Part one is we're asking  
25 the Court to order any defendant who's been in this case as a

1 defendant in Valsartan to just agree to accept service on  
2 behalf of all of their clients, but, most importantly, the  
3 foreign clients so that we can, you know, start this case. And  
4 part two of the ask is for foreign defendants who are not yet  
5 in the case, meaning that they are not defendants in the  
6 Valsartan portion of this MDL, the ruling that Judge Kugler had  
7 given early on in this litigation is that we only need to serve  
8 those defendants formally through the Hague Convention once,  
9 and once that formal process has happened once, that's deemed  
10 to be proper service; and from then on those defendants need to  
11 be accepting service through the protocols that have been acted  
12 -- that have been enacted, meaning that the defendants will  
13 accept service electronically and through MDL centrality.

14 JUDGE VANASKIE: All that seems very straightforward  
15 to me. What's the problem from the defense perspective? Who  
16 will be addressing this issue?

17 MR. GOLDBERG: Your Honor, this is Seth Goldberg on  
18 behalf of the defendants.

19 I -- this issue, I think, it's somewhat defendant  
20 specific. I know a number of defendants have provided the  
21 waiver. I'd ask for the opportunity for defendants to confer  
22 again with Ms. Goldenberg so we can resolve this. I don't -- I  
23 don't disagree that it's straightforward. I think this may be  
24 more a matter of defendants just being scattered about on this  
25 issue, with so many of us and so many different points of view;

1 but I think if we have the opportunity to discuss it as a  
2 group, we can get organized on it and resolve it fairly  
3 quickly.

4 JUDGE VANASKIE: Okay. That's very encouraging.

5 ELECTRONIC VOICE: Joining the meeting.

6 JUDGE VANASKIE: Do you think you're in a position to  
7 have it resolved by our mid-month conference?

8 MR. GOLDBERG: Yes, Your Honor.

9 JUDGE VANASKIE: Okay. All right. Let me just urge  
10 you to work towards that resolution. It is a straightforward  
11 matter. Hopefully, it won't require any actual decision by the  
12 Court with respect to this matter, and we'll get that matter  
13 moving along.

14 Is there anything else you wanted to cover before we  
15 get Judge Kugler on this call?

16 MR. GOLDBERG: Nothing from the defendants, Your  
17 Honor.

18 MR. SLATER: Nothing from plaintiffs, Your Honor.

19 JUDGE VANASKIE: Okay. Very well. All right. I'm  
20 going to drop off the call, call Judge Kugler and join you all  
21 back in here. All right. Thank you.

22 (Brief recess taken at 11:29 a.m.)

23 JUDGE VANASKIE: All right. We're waiting on Judge  
24 Kugler right now who's -- I gave him the new dial-in  
25 information.

1 (Judge Kugler joins the teleconference.)

2 JUDGE KUGLER: Good morning, everybody.

3 MS. LOCKARD: Good morning, Your Honor.

4 MR. GOLDBERG: Good morning.

5 JUDGE KUGLER: How's everybody doing? Beautiful sunny  
6 day here in downtown Camden, New Jersey. I'm sure you all miss  
7 being in Camden, right?

8 UNIDENTIFIED SPEAKER: We do.

9 JUDGE KUGLER: All right. Well, let's get to work.  
10 We have some -- how about we go through the easy stuff, the  
11 dismissals first that are listed.

12 The first one I have a question about is the Theodore  
13 Keller case. Now, we got this motion by Mr. Sachs, Mr. Welsh,  
14 to vacate the prior dismissal and then in the memorandum I got  
15 yesterday, defendants say that Mr. Keller still hasn't  
16 completed the information that he needs to complete.

17 What is the current status of that?

18 MS. GOLDENBERG: Your Honor, this is Marlene  
19 Goldenberg for the plaintiffs.

20 I've been in touch with counsel for this client and  
21 they forwarded me an email last night from defense counsel  
22 indicating that I believe everything has now been cured and  
23 they do not oppose plaintiff's motion to reinstate the case.

24 JUDGE KUGLER: Who wants to speak for the defendants?

25 MR. HARKINS: Good morning, Your Honor. This is

1 Steven Harkins with Greenberg, Traurig, for the Teva defendants  
2 and the joint defense group.

3 I can confirm that we were able to resolve the  
4 outstanding deficiencies last night. This PFS is now  
5 substantially complete and the defense no longer opposes the  
6 motion to reconsider filed by Mr. Keller's counsel.

7 JUDGE KUGLER: Okay. We will then vacate the prior  
8 order dismissing this and reinstate this case.

9 All right. There's four dismissals being sought  
10 today. Delgado Riffenburg, Babin, Hill and Trowbridge. Any  
11 news on those? Any objection to those?

12 MR. WILLIAMSON: Your Honor, this is George  
13 Williamson, for the record.

14 I just want to point out on Mr. Hill's case that we  
15 did reach out to the defendants on February 2nd to ask for a  
16 dismissal. We asked if the defendants would agree to it. And  
17 I just wanted to point out that, you know, we did that in order  
18 to try and get this off Your Honor's plate but we got no  
19 response. And, you know, I can only speak for myself, but in  
20 hearing from other counsel, it sounds like that might be an  
21 issue that's not unique to my case. But I'm not opposing the  
22 dismissal today. I just wanted to bring that to Your Honor's  
23 attention.

24 JUDGE KUGLER: Well, what's the problem? I'm not sure  
25 I understand what the problem is.

1 MR. WILLIAMSON: So the only -- the issue that I bring  
2 up is just to say to Your Honor that we are trying to move  
3 these off of Your Honor's plate and asked the defendants to  
4 agree to a dismissal but we got no response. So I'm just  
5 trying to unclutter the cases for Your Honor, at least that my  
6 firm have filed, but I haven't gotten a response from the  
7 defendants to help do that.

8 JUDGE KUGLER: Mr. Harkins, do you want to say  
9 anything about this?

10 MR. HARKINS: Your Honor, this is Steve Harkins on  
11 behalf of the defense group.

12 In a number of other cases where plaintiffs have  
13 affirmatively taken the steps to voluntarily dismiss their  
14 cases, we certainly reported that in prior conferences that  
15 cases no longer needed to be addressed; but where the voluntary  
16 dismissal has not been filed, we're maintaining these cases on  
17 the list and are moving forward with the dismissal process that  
18 we've been using previously.

19 So I don't know there was anything for us to do with  
20 respect to the case referenced here. If plaintiffs had got it  
21 dismissed prior to today, we certainly would not have included  
22 it and wouldn't be requesting a dismissal with respect to it  
23 now.

24 MR. WILLIAMSON: Well, Your Honor, again, this is  
25 George Williamson. Just for the record, you know, we had taken

1 a position that it was necessary to reach out to the defendants  
2 and get their approval or consent before we filed the  
3 dismissal; and if that's not the case, then -- then we'll --  
4 we'll just go ahead and file the dismissals without reaching  
5 out to defense counsel, but that was my understanding of what  
6 we needed to do.

7 JUDGE KUGLER: Well, I understand from Mr. Harkins  
8 that you don't need his approval; just go ahead and file the  
9 dismissal.

10 MR. WILLIAMSON: We will do that moving forward, Your  
11 Honor. Thank you.

12 JUDGE KUGLER: All right. Did anybody else have any  
13 other objections on these four cases?

14 MR. HARKINS: Your Honor, this is Mr. Harkins again.  
15 Just to update the Court, we have reached a  
16 preliminary resolution on the Babin, Amanda, case. We are no  
17 longer requesting dismissal of that case at this time.

18 JUDGE KUGLER: Okay. Thank you.

19 All right. The Riffenburg, Hill and Trowbridge cases,  
20 they will be dismissed.

21 MS. GOLDENBERG: Your Honor, this is Marlene  
22 Goldenberg.

23 JUDGE KUGLER: Next item --

24 MS. GOLDENBERG: I am -- I'm sorry, Your Honor. This  
25 is Marlene Goldenberg on behalf of the plaintiffs.

1 I wasn't sure if anyone from Watts, Guerra was on the  
2 phone. In their absence, I did want to point out that the  
3 remaining deficiencies are not what I think this Court has  
4 previously deemed to be for. There are a number of  
5 representations in the defendants' letter that certain things  
6 that are more important are going to be supplemented; but the  
7 fact that a plaintiff hasn't answered a question about whether  
8 or not life insurance is something that they have doesn't seem  
9 to be an issue that the case is going to rise and fall on. And  
10 so I just wanted to oppose their motion to dismiss the Delgado  
11 Riffenburg case on that basis.

12 JUDGE KUGLER: Well, I think you've all seen that you  
13 can work with the defense counsel after these motions and after  
14 the orders have been entered to reinstate them if you correct  
15 the deficiencies. So I wouldn't be too worried about it. But  
16 we'll dismiss it for now, see what happens.

17 MS. GOLDENBERG: Okay. Thank you.

18 JUDGE KUGLER: All right. We have a list of the eight  
19 cases that defendants seek to move to an order to show cause  
20 status.

21 Mr. Harkins, any changes there?

22 MR. HARKINS: Your Honor, we have two updates from  
23 that list. We have resolved the Betz, B-E-T-Z, Raymond, case  
24 and the Crowe, C-R-O-W-E, Robert, case and are no longer  
25 requesting orders to show cause with respect to those two. We

1 do request orders to show cause with respect to the remaining  
2 six cases on the list.

3 JUDGE KUGLER: Any plaintiffs object to move these six  
4 to order to show cause status?

5 (No response.)

6 JUDGE KUGLER: Okay. Hearing none, then the  
7 Patterson, Gibson, Medrano, M-E-D-R-A-N-O, Greenleaf, Jackson,  
8 and Newcomb cases will appear as orders to show cause  
9 returnable at the next conference.

10 We have now next, we have a number that appears that  
11 they now seek to move to a second listing.

12 Mr. Harkins, any changes in those lists?

13 MR. HARKINS: No changes to that list from the  
14 defense, Your Honor.

15 JUDGE KUGLER: All right. There are 11 plaintiffs  
16 listed. Any plaintiffs want to be heard on these 11? We're  
17 just going to move these to another listing.

18 (No response.)

19 JUDGE KUGLER: All right. Hearing none, it would be  
20 the Dufrene, D-U-F-R-E-N-E, Walsh, McReynolds, Thompson,  
21 Little, Selma, James Thompson, Hoppus, H-O-P-P-U-S, Stone,  
22 Flores, F-L-O-R-E-S, and Biggs, B-I-G-G-S, will be relisted for  
23 the next conference.

24 And then that leaves at the end there are seven more  
25 failures to file PFS.

1 Mr. Harkins, any changes in those?

2 MR. HARKINS: No changes from the defense, Your Honor.

3 JUDGE KUGLER: Any plaintiff want to be heard on  
4 these?

5 (No response.)

6 JUDGE KUGLER: All right. Having heard nothing, Kopp,  
7 K-O-P-P, Becton, B-E-C-T-O-N, Osolin, O-S-O-L-I-N, McGuire,  
8 Righteous, Wilcox, and Williams will all be listed again in  
9 this matter.

10 All right. Now, in your memos there was talk about  
11 you were working on an order for dismissal of peripheral  
12 defendants for the losartan/irbesartan matters. What's the  
13 status of that?

14 MS. GOLDENBERG: Your Honor, this is Marlene  
15 Goldenberg.

16 I believe that we have that just about wrapped up and  
17 we should be able to get it to you today.

18 JUDGE KUGLER: Good. Thank you.

19 There's an issue that's raised about service of  
20 process in the losartan and irbesartan cases. Has there been  
21 any progress in working that out?

22 MS. GOLDENBERG: Your Honor, we had talked about this  
23 with Judge Vanaskie and he instructed the defendants to see if  
24 they could work that out among themselves and if we have any  
25 remaining issues to tee that up in two weeks.

1 JUDGE KUGLER: Great. All right. Bellwether, I see  
2 that we lost some bellwether cases because of the Court's --  
3 one of the Court's motions to dismiss decisions. There was  
4 some discussion going back and forth about selection. What's  
5 the status of that?

6 MS. COHEN: Good morning, Your Honor.

7 MR. SLATER: Good morning, Your Honor. This is Adam  
8 Slater. How are you?

9 JUDGE KUGLER: All right.

10 MR. SLATER: I think that the premise of what you just  
11 said is not something that we're in agreement on. The  
12 defendants have suggested that their interpretation of your  
13 order on motion to dismiss -- or Motion to Dismiss Order Number  
14 5 is a complete dismissal of the claims from states, for  
15 example, like New Jersey where Your Honor directed plaintiffs  
16 to replead, for example, to replead, using New Jersey as the  
17 example, under the New Jersey Product Liability Act which  
18 subsumes all claims other than breach of express warranty and  
19 potentially other claims based on the recent case law out of  
20 the Supreme Court of New Jersey having to do with consumer  
21 fraud and other claims. The defendants were taking the  
22 position that those claims were dismissed with prejudice and  
23 plaintiffs could not pursue, for example, the subsumed causes  
24 of action of manufacturing defect, design defect, failure to  
25 warn, all of which are obviously within the scope of the PLA in

1 New Jersey and the remedies permitted, such as loss of  
2 consortium damages, compensatory and punitive damages is also  
3 contemplated through the PLA. So our intention is to simply  
4 amend and plead through the state Product Liability Act in New  
5 Jersey and the other states Your Honor mentioned in your  
6 decision or focused on in your decision.

7 So from our perspective, there's not a complete  
8 dismissal of the claims; otherwise, if defendants were correct,  
9 for example, a plaintiff from New Jersey would have a breach of  
10 express warranty claim and could not pursue the claims under  
11 the New Jersey PLA based on the other theories. So I wanted to  
12 bring that out.

13 The other part is the procedure for dismissal which,  
14 you know, I'll leave to other counsel to discuss, but that was  
15 the part I wanted to raise with Your Honor and address with  
16 Your Honor.

17 MS. COHEN: Your Honor, this is Lori Cohen with  
18 Greenberg, Traurig. I'm happy to respond to Mr. Slater's first  
19 point that he raises.

20 This is something that we talked about with Judge  
21 Vanaskie. I would say that we are still, on defense side and  
22 working hand in hand with plaintiffs' counsel, you know,  
23 analyzing this issue that is the impact of your order on the  
24 bellwether plaintiffs and what will be left. And, again, as I  
25 mentioned earlier this morning to Judge Vanaskie, we want to

1 wait and see sort of what plaintiffs do, if they replead, how  
2 that looks without, of course, waiving any rights or  
3 objections. So we think we can put that issue off until we see  
4 what they do with that. And we're still, you know, analyzing  
5 on the defense side, I don't think we have complete agreement  
6 about the impact, not surprisingly, of your order; but we're  
7 willing to keep talking about that and put that off until  
8 probably the next hearing, again, see what they replead, if  
9 they get that to us in the coming weeks and we'll see what's  
10 left after that.

11 Just for your information, of the 28 bellwether  
12 plaintiffs, I believe nine kind of are covered by your ruling,  
13 six of which are the defense. I may be off on the numbers but  
14 I think that's what it comes down to. So there are a  
15 substantial number and we want to see how it shakes out.

16 The other more -- I think more vital issue, and the  
17 one that's more timely for today, and we've, again, discussed  
18 this with Judge Vanaskie, I believe he agrees with, at least  
19 initially, with the defense position on this, is the proposed  
20 order that we submitted, and this was attached to the defense  
21 submission, this is the order establishing trial pool cases  
22 which we have agreed to amongst the defendants as well as with  
23 the plaintiffs, other than one provision, which is Provision  
24 Number 7, which you'll see. And the only purpose of this, even  
25 though it's only one provision, it's a very important one to

1 the defense side, and, again, I think Judge Vanaskie may have  
2 introduced this to you or discussed this with you as well,  
3 because we discussed this with him, but this is just a  
4 requirement that before cases are unilaterally dismissed by  
5 plaintiffs of this bellwether group, where we're moving along,  
6 you know, spending time and resources and energy, that it has  
7 to conform with Rule 41, that is, we either have to consent to  
8 it on the defense side or the Court has to agree and order it.  
9 So this is to prevent plaintiffs from continuing to dismiss,  
10 whether with prejudice or without, cases unilaterally without  
11 comporting with Rule 41 and the requirements. We think it's an  
12 important provision.

13 We also question why plaintiffs are resisting this.  
14 We think it should not prejudice them in any way, and we think  
15 that it's just a -- I think it was argued that it was one extra  
16 hurdle. Well, there should be that extra hurdle when we're all  
17 working on this group of 28 bellwethers.

18 So I'm happy to respond to further questions, but we  
19 think that this is an important provision that must be in this;  
20 otherwise, plaintiffs will be allowed to, you know, dismiss  
21 plaintiffs as they want without running through the appropriate  
22 channels of the court.

23 JUDGE KUGLER: Well, historically, I think you  
24 recognize that this is a problem in all MDLs that utilize  
25 bellwether plaintiffs. You go through dozens and dozens of

1 cases before you end up with a pool because plaintiffs are just  
2 dropping out as their cases get picked for various reasons that  
3 aren't important to go into. So it's not like we have no  
4 experience with that problem.

5           The issue is because there are no answers being filed,  
6 what part of Rule 41 are you looking at? I mean, the  
7 plaintiffs take the position because no answer's being filed  
8 and no motions for summary judgment as to that specific  
9 plaintiff have been filed that they can unilaterally dismiss  
10 their case at any time, and that's, indeed, what the rule says.

11           Defendants' position is, well, you know, Judge, you  
12 entered the order which, in essence, says that we don't have to  
13 file an answer because we deny everything and it's just wasting  
14 time to have to file a pleading in every one of these cases.  
15 So that's the equivalent of filing an answer in these cases.

16           I have to tell you that I agree with the plaintiffs,  
17 that they have the ability under the rule to unilaterally  
18 dismiss the case at any time they want without a court order.  
19 I'm not even sure what kind of order you would seek from the  
20 Court anyway. I don't know that I would be in -- that I would  
21 desire to impose some kind of conditions on a plaintiff who's  
22 decided they don't want to continue with the case anymore at  
23 this stage of the case. So I think the plaintiffs are correct  
24 that they can dismiss.

25           I think the more important question is what happens,

1 how do you replace the now missing plaintiff? Who gets to do  
2 that? My practice has been the plaintiff can then replace  
3 them. And I understand that, you know, this may continue and  
4 we may keep losing plaintiffs. As the plaintiff counsel picks  
5 new people, they're going to be dismissing a large number of  
6 them, but I think the plaintiff should have the ability to  
7 replace those that they dismiss. And we'll keep going until we  
8 get enough cases.

9 MS. COHEN: And, Your Honor, if I may respond to that  
10 briefly.

11 I think you are exactly right that we rely on the fact  
12 that the Court ordered that no answer be required in terms of  
13 why it fits within Rule 41.

14 In terms of the replacement --

15 ELECTRONIC VOICE: Joining the meeting.

16 MS. COHEN: -- we actually have an agreement already  
17 with plaintiffs' counsel that if a bellwether case is  
18 dismissed, the party who selected that case gets to pick the  
19 replacement. So we've worked that piece out already, so we  
20 have a provision for what happens. But even so, we still,  
21 again, I understand your ruling, Your Honor, we still believe  
22 that we'd like to have a provision in here. Again, I say that  
23 respectfully, understanding your ruling, but -- but on the  
24 other piece, we do already have an agreement that the party who  
25 selected it, as I think Mr. Slater says in his letter, may pick

1 the replacement. So if they dismiss one of these cases --  
2 subject to your order, if one of the defense picks gets  
3 dismissed, then we get to replace that one under our agreement.  
4 I think that's already been decided.

5 MR. NIGH: Your Honor, this is Daniel Nigh. If I  
6 could address this issue.

7 We discussed earlier this morning with Judge Vanaskie  
8 and made our position very clear that at this point we believe  
9 it's too early to put anything into this order. Whether or not  
10 there are replacement picks really kind of depends on when the  
11 dismissal occurs. We have 28 bellwether cases here. Right now  
12 we haven't been informed of a single person that's going to  
13 dismiss a case. We think it's premature to have any type of  
14 dismissal language in this initial order. That's our position.  
15 And whether or not there may be dismissals and whether or not  
16 we can reach an agreement on how that occurs, you know,  
17 that's -- that's something we can discuss, you know, in the  
18 future; but I think it's premature for this order because we  
19 don't have a single dismissal. We have voiced that position  
20 multiple times.

21 What I do believe will occur is we're going to have to  
22 get from 28 cases down to a more manageable trial pool of  
23 something like six to eight cases, similar to what we did in  
24 *Benicar* where we got it down to ten cases. You know, we've got  
25 to have some type of mechanism. We haven't addressed that yet.

1 The plaintiffs are going to send their proposal next week and  
2 it might be through that mechanism that early dismissals, you  
3 know, are addressed. But, frankly, this-one-size-fits-all  
4 clause that they've included in this order we don't think's  
5 appropriate.

6 MS. COHEN: Your Honor, this is Lori Cohen again. I  
7 just want to respond briefly to that, which is, again, I, too,  
8 have been in other MDLs and they typically, you know, have had  
9 the provision that if the plaintiffs dismiss a defense pick,  
10 the defense gets to replace it. And I think in Mr. Slater's  
11 letter to Your Honor and to Judge Vanaskie, it says, plaintiffs  
12 propose that if a bellwether case is dismissed, the party who  
13 selected that case in the pool may pick a replacement. This  
14 procedure would allow defendants to re-select a case in the  
15 pool if a case in their original selection is dismissed.

16 So I think they've already announced that, agreed to  
17 that and would want to include that language in the order.

18 MR. NIGH: But to -- this is Daniel Nigh again.

19 To go along those lines, we have not agreed that  
20 should be included in this order. We do believe that there's  
21 going to be a mechanism discussed in the next order where we  
22 get it down from 28 to six, eight or ten cases, and that's  
23 going to be the appropriate place where we have this  
24 conversation in terms of replacement picks.

25 As of right now, there hasn't been a single case

1 dismissed, there hasn't been any discussion of a case being  
2 dismissed, so as of right now, it's premature and we think that  
3 this type of ruling or the way the wording is in that order, it  
4 is premature at this point since we don't have a single case  
5 that's been dismissed.

6 MS. COHEN: And, again, Your Honor, this is Lori Cohen  
7 again. This is what we relied on, their agreement to this,  
8 what they stated in the court to you, and we just want to  
9 memorialize it in an order and I think it's important. Again,  
10 it doesn't sound like a big deal but we are spending a lot of  
11 time and money and expense on this current group of bellwether  
12 plaintiffs. So if plaintiffs withdraw one, necessarily we lose  
13 that effort and expense and resources; but, secondarily, it  
14 creates an imbalance. And the important thing is the fairness  
15 aspect and that this is a representative group of bellwether  
16 plaintiffs. That's what everyone wants on both sides,  
17 including the Court, as I understand it. And so, again, to  
18 have plaintiffs be able to withdraw plaintiffs and not have the  
19 defense replace ones that we picked originally would create an  
20 imbalance and also prejudice to the defense.

21 JUDGE KUGLER: This is Judge Kugler again. I think  
22 you know my feelings on the subject, but let me point out what  
23 was illustrated a few minutes ago, and that is if you have  
24 unilateral dismissals, it's broader than the bellwether issue  
25 because we're seeing dismissals as cases hit the order to show

1 cause list. And in those instances, as we just heard, it seems  
2 to be the defendants' position that plaintiffs can unilaterally  
3 dismiss a case before I dismiss it as a result of the order to  
4 show cause without condition; and I think that's the way to go  
5 consistently throughout the case, even for bellwether cases.  
6 But you know my feelings on this and it sounds to me like you  
7 need to talk to each other a little bit longer; and if you  
8 can't resolve it, then we'll resolve it at the next conference.

9 MS. COHEN: Okay. Thank you, Your Honor. And, again,  
10 you know -- this is Lori Cohen again, for the record. We just  
11 think this is a different scenario than the larger group of  
12 plaintiffs where you get down to the 28 cases for the reasons I  
13 already stated, so I wouldn't belabor this point; but we will  
14 continue to discuss this.

15 JUDGE KUGLER: Okay. Do the defendants have anything  
16 else they need to discuss at this time?

17 MR. HARKINS: Nothing from defendants, Your Honor.

18 JUDGE KUGLER: How about the plaintiffs?

19 MR. SLATER: Nothing from plaintiffs, Your Honor.

20 JUDGE KUGLER: All right. Well, then, I guess that  
21 concludes the proceedings today. Thank you, everybody. Stay  
22 safe, stay well, and hopefully at the next conference I will  
23 have more news as to when we can anticipate we're going to  
24 start to reopen the courthouse and perhaps even one of these  
25 days we'll have in-person proceedings. But thank you,

1 everybody. Take care.

2 MR. SLATER: Thank you, Your Honor.

3 MS. LOCKARD: Thank you, Your Honor.

4 (The proceedings concluded at 12:03 p.m.)

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9 I certify that the foregoing is a correct transcript  
10 from the record of proceedings in the above-entitled matter.

11

12 /S/ Camille Pedano, RMR, CCR, CRR, CRC, RPR  
13 Court Reporter/Transcriber

14 02/26/2021  
15 Date

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